

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: :
:
Darrell Lee Day : **Case No.: 18-10463**
:
Debtor(s). : **Chapter 7**
: **Judge Jeffery P. Hopkins**
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**MOTION OF NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER FOR RELIEF
FROM STAY ON FIRST MORTGAGE FOR REAL PROPERTY LOCATED AT 805
MARK AVE, HAMILTON, OH 45013**

Nationstar Mortgage LLC d/b/a Mr. Cooper (the "Creditor") moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code. In support of this Motion, the Creditor states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On February 8, 2002, Darrell Lee Day ("Debtor") obtained a loan from National City Mortgage Co dba Commonwealth United Mortgage Company in the amount of \$121,000.00. Such loan was evidenced by a Promissory Note dated February 8, 2002 (the "Note"), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Mortgage dated February 8, 2002 (the "Mortgage"). The Mortgage granted a lien on the property owned by Debtor, located at 805 Mark Ave, Hamilton, OH 45013 (the "Property") and more fully described in the Mortgage. Darrell Lee Day, unmarried acquired title to the Property by virtue of a deed from Jacqueline G. Robinson, Trustee, F/K/A Jacqueline Gl. Leibrock, Trustee, herein referred to as Grantor, dated September 30, 1997, filed October 3, 1997, recorded at Official Instrument Number 9700055490, Recorder's Office, Butler County, OH. A copy of said Deed is attached as Exhibit B.
4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Butler County Recorder on February 28, 2002. A copy of the Mortgage is attached as Exhibit C. The lien is the first lien on the Property.
5. The Note was transferred as follows:
 - a. from PNC Bank, National Association s/b/u National City Mortgage Co. dba Commonwealth United Mortgage Company to _____. The transfer is evidenced by the indorsement attached to this Motion as Exhibit A. Because the endorsement is in blank and Creditor is in possession of the original Note, Creditor is entitled to enforce the instrument.
 - b. Mr. Cooper is the successor in interest to Nationstar Mortgage LLC as described in detail in the Merger Document attached to the Motion as Exhibit D.
6. The Mortgage was transferred as follows:
 - a. from PNC Bank, National Association formerly known as National City Bank successor in interest to National City Mortgage Co DBA Commonwealth United Mortgage Company to Nationstar Mortgage LLC, dated May 25, 2017. The transfer is evidenced by the document attached to this Motion as Exhibit E.
7. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts,

judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

8. The value of the Property is \$92,160.00. This valuation is based on the Butler County Auditor's tax record which is attached as Exhibit F.

9. As of February 19, 2018, there is currently due and owing on the Note the principal balance of \$87,779.80, plus interest accruing thereon at the rate of 6.875% per annum from June 1, 2017.

10. Other parties known to have an interest in the Property are as follows:

- a. the Butler County Treasurer, in an unknown amount;
- b. Ohio Dept. of Taxation is believed to be the holder of a judgment lien on the Property with an approximate payoff of \$288.60 per Debtor's Schedule D.

Attached as Exhibit G is Debtor's Schedule D.

11. The balance on Creditor's first mortgage exceeds the value of the Property. Based upon the lack of equity in the Property, Creditor asserts that the Property is burdensome and/or of inconsequential value and benefit to the estate.

12. The Creditor is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reason(s):

- a. Debtor has failed to provide adequate protection for the lien held by the Creditor for the reasons set forth below.
- b. Debtor has failed to make periodic payments or had made partial payments to Creditor for the months of July 2017 through February 2018 which unpaid payments less any funds being held in suspense are in the aggregate amount of \$8,256.32 through February 19, 2018. The total provided in this paragraph cannot be relied upon as a reinstatement quotation.
- c. Debtor intends to surrender the Property located at 805 Mark Ave, Hamilton, OH 45013 according to the Statement of Intent filed.

13. Creditor has completed the worksheet attached as Exhibit H.

14. This Motion does not seek to affect the rights of the Chapter 7 Trustee.

WHEREFORE, Creditor prays for an Order from the Court granting Creditor relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code to permit Creditor to proceed under law and for such other and further relief to which the Creditor may be entitled.

Respectfully submitted,

/s/ Adam B. Hall

Adam B. Hall (0088234)
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Attorneys for Creditor
The case attorney for this file is Adam B. Hall.
Contact email is abh@manleydeas.com

NOTICE OF MOTION

Nationstar Mortgage LLC d/b/a Mr. Cooper has filed papers with the court to obtain relief from stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to:

Clerk of the United States Bankruptcy Court
Atrium Two, Suite 800
221 East Fourth Street
Cincinnati, OH 45202

OR your attorney must file a response using the court's ECF system.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Manley Deas Kochalski LLC, Attention: Adam B. Hall, P.O. Box 165028 Columbus, OH 43216-5028

Office of U.S. Trustee, Southern District of Ohio, Party of Interest, 36 East Seventh Street, Suite 2030, Cincinnati, OH 45202

George Leicht, PO Box 602, Batavia, OH 45103-0602
gleicht@eos.net

Eileen K. Field, Attorney for Darrell Lee Day, 3991 Hamilton Middletown Road, Suite U, Hamilton, OH 45011
eileenfield.atty@fuse.net

Darrell Lee Day, 805 Mark Ave., Hamilton, OH 45013

Butler County Treasurer, 315 High Street, 10th Floor, Hamilton, OH 45011

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Relief from Stay on First Mortgage for Real Property Located at 805 Mark Ave, Hamilton, OH 45013 was served **electronically** through the court's ECF System at the email address registered with the court:

Office of U.S. Trustee, Southern District of Ohio, Party of Interest, 36 East Seventh Street, Suite 2030, Cincinnati, OH 45202

George Leicht, PO Box 602, Batavia, OH 45103-0602, gleicht@eos.net

Eileen K. Field, Attorney for Darrell Lee Day, 3991 Hamilton Middletown Road, Suite U, Hamilton, OH 45011, eileenfield.atty@fuse.net

and by ordinary U.S. mail on March 20, 2018 addressed to:

Darrell Lee Day, 805 Mark Ave., Hamilton, OH 45013

Darrell Lee Day, 805 Mark Ave, Hamilton, OH 45013

Butler County Treasurer, 315 High Street, 10th Floor, Hamilton, OH 45011

Ohio Dept. of Taxation, Attn: Bankruptcy Dept., PO Box 530, Columbus, OH 43266-0030

/s/ Adam B. Hall
Adam B. Hall